Wiretapping Bill Is Freed For House Floor Action

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In a move described as crucial to the first substantial "reform" for the nation's intelligence community, a House Judiciary subcommittee yesterday cleared the way for floor action on a bill to control national security wiretapping and bugging.

Rep. Robert W. Kastenmeier (D-Wis.), the subcommittee chairman, acknowledged that the measure as it stands had the wholehearted support of almost no one, but defended it as a marked improvement over present practice.

The subcommittee freed the bill for floor action in a curious manner—by voting 4 to 3 to table it and thus prevent any tampering by the Judiciary Committee.

The House Intelligence Committee, which has concurrent jurisdiction and has already recommended the bill as it stands, will be able to get it scheduled for floor action.

The legislation would require the nation's intelligence agencies to obtain a judicial warrant, under an elaborate set of standards, befor undertaking electronic surveillance in most foreign intelligence cases.

Liberal and conservative critics of the measure were hoping, for completely opposite reasons, for a chance to carve it up in the Judiciary Committee. If it were opened up to amendments there, Kastenmeier said just before yesterday's vote, "I think we would have no bill at all."

Reps. Robert F. Drinan (D-Mass.), Thomas F. Railsback (R-Ill.), and M. Caldwell Butler (R-Va), voted against the tabling motion. Drinan is opposed to legislation that sanctions electronic surveillance. The Republicans want to leave the power to conduct it in national security cases within the executive branch, without requiring court review.

The Supreme Court has never resolved the issue. Administrations have claimed the "inherent power" to order warrantless surveillance in foreign intelligence cases ever since 1940, when President Roosevelt asserted in a memo taht it would be proper under the Constitution when "grave matters involving defense of the nation" were involved.

It grew to the point where then-attorney general Herbert Brownell, in a 1954 memo, endorsed the FBI's "unrestricted use" of the technique on behalf of "the national interest." At present, in the wake of congressional disclosures of intelligence agency abuses, the administration is operating under an executive order President Carter issued in January.

Under it, the attorney general can authorize a particular surveillance if he has "probable cause" to believe a person to be an "agent of a foreign power." The term is not defined, and no judicial warrant is required.

The measure freed by yesterday's subcommittee vote would require warrants for any electronic, national security surveillance in this country in which a "United States person"—anyone from a citizen or permanent resident alien to a corporation—may be a party to the conservation.

A special panel of judges would be set up to review the applications. Warrants would also be required in other cases involving foreign citizens, except for a top-secret class of surveillances conducted by the National Security Agency.

These "most sensitive surveillances," which apparently require occasional surreptitious entries by the FBI, involve communications between or among foreign powers, such as messages from an embassy to its government abroad, and, according to the House Intelligence Committee, are not likely to interfere with the rights of Americans.

In testimony on the bill yesterday morning, the American Civil Liberties Union offered what amounted to a lukewarm endorsement, terming it "a modest improvement over current law," but taking sharp exception to provisions allowing easy surveillance of "members" of a foreign power.

"This would include, for example, all employes of Air France, the prime minister of England or a member of any foreign political party on an official visit," ACLU spokesmen Jerry Berman and John H. F. Shattuck protested. They contended that court decisions offer little basis for the distinctions that the bill draws between types of foreigners lawfully in the United States.

Former solicitor general Robert H. Bork, who also testified, assailed the measure as "a thoroughly misguided

venture that would drag the courts into unfamiliar territory where the judges would either have to go along with the executive branch or keep their dissents a secret.

Another witness, Rep. Romano L. Mazzoli (D-Ky.), maintained, however, that self-imposed administration guidelines were simply not adequate.

"The American people—for good reason—have over the years been skeptical about the commitment of the executive branch of government to honor their individual liberties and personal rights," Mazzoli said.